IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMM.SUIT NO.5212 OF 2000

M/s Micro Sales Corpn.. Plaintiff

versus

M/s R.N.Enterprises & ors .. Defendant

Mr B.A.Vora for Plaintiff

CORAM : D.G. KARNIK, J

DATED : 19th April 2005.

P.C:-

1. Heard learned counsel for the plaintiff. None present for the defendants. Perused the affidavit of service of the writ of summons sworn by Mr. B.A.Vora on 5th December, 2003. Also perused the deocuments filed by the plaintiff alnog with the list dated 24th January, 2005. The documents are collectively marked Exhibit A. Learned counsel for the plaintiff hands in another affidavit dated 13th April, 2005 sworn in by partner of the plaintiff. The letter dated 24th September, 1997 written by the defendants to the plaintiff forwarding the demand draft of Rs.10,000/-

is annexed to the said affidavit. The affidavit is also taken on record.

2. Despite service of the writ of summons the defendants have not appeared. I have perused the plaint and the documents filed on record. The plaintiff sold, supplied and delivered to the defendants goods and sent bills. The defendant made part payment of Rs.10,000/- alongwith letter dated 24th September, 1997. However, he failed and neglected to pay the balance amount. Hence, the plaintiff has filed this suit for the recovery of the amount. Suit is filed within 3 years from the date of part payment alongwith a letter dated 24th September, 1997. Hence, suit is filed in time. Learned counsel for the plaintiff states that there was no written agreement to pay interest. In the circumstances, the plaintiff is not entitled to interest prior to the date of the suit though the plaintiffs is entitled under section 34 of the Code of Civil Procedure after the date of filing of the suit.

3. The plaintiff is entitled to a decree under Order 37 Rule 2 (3) of the Code of Civil Procedure. Hence, suit of the plaintiff is decreed as follows:

"The defendants shall pay to the plaintiff a sum of Rs.64,940/- together with interest thereon at 9 % p.a. from the date of suit till payment and all costs of the suit. Issue court fee refund as per rules. "

D.G.KARNIK, J